



which he had been a passenger. On February 20, 2004, Brewer filed a Motion to Approve Settlement in the state court action, in which it was recited that Sparks' liability insurance carrier, Nationwide Mutual Insurance Company ("Nationwide"), had tendered its policy limit of \$100,000 in settlement of Sparks' liability arising out of the accident. In addition, it was alleged that Brewers' insurance company, State Farm Mutual Automobile Insurance Company ("State Farm") had "tendered a settlement" of its policy limits of underinsurance coverage of \$25,000 and medical payments coverage of \$20,000. (Mot. Approve Settlement ¶ 4.) Brewer further recited that "Plaintiff has [thus] received settlement offers totaling One Hundred Forty-Five Thousand Dollars (\$145,000.00) conditioned upon receiving a waiver of subrogation from all other insurance carriers." (*Id.*) The motion also alleged that Brewer's father was employed by Bristol Compressors and through a group medical insurance carrier, that company had paid approximately \$160,000 in medical expenses on Brewers' behalf. The medical insurance carrier, it was claimed, was demanding repayment of these amounts, "which would result in the Plaintiff being left without compensation for his injuries." (*Id.* ¶ 6.) The motion requested the state court to declare the rights of Brewer, his attorneys, and the "medical insurance carrier" to the settlement funds. (*Id.*)

Following the motion by Brewer in state court, the present action was filed against Brewer, Sparks, Nationwide, and State Farm by York International Corporation Employee Benefit Plan (the “Plan”), a self-funded employee benefit plan established for employees of Bristol Compressors, Inc.<sup>1</sup> In this action, based on section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C.A. § 1132(a)(3) (West 1999), the Plan alleges that it is entitled to reimbursement out of the proposed settlement for the amounts that it paid on Brewer’s behalf for medical expenses. It claims to seek equitable relief, including an equitable lien or constructive trust on the proceeds of such settlement.

Sparks, Nationwide, and State Farm failed to respond to the present suit and defaults have been entered against them. The Plan has moved for summary judgment, which motion has been briefed and argued.

The Supreme Court recently ruled on the existence of a cause of action under ERISA under facts similar to the present ones in *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002). In that case, an employee benefit plan sued in federal court seeking reimbursement of medical expenses paid on behalf

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<sup>1</sup> Also included as parties plaintiff are Bristol Compressors, Inc., and York International Corporation, the sponsor and administrator of the Plan. The interests of all of the plaintiffs are the same and for convenience’s sake they will be referred to collectively as the Plan.

of the plan's beneficiary as the result of an automobile accident. Before suit was filed, the beneficiary had settled her tort claim and the proceeds of the settlement had been disbursed. The Supreme Court narrowly construed the forms of equitable relief available under section 502(a)(3) and held that because the proceeds of the settlement had been disbursed, there was no property in the plan beneficiary's possession upon which a constructive trust or equitable lien could be imposed. 534 U.S. at 214. Similarly, the Court held that injunctive relief was unavailable because "an injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation," was not a traditional equitable remedy. *Id.* at 210-11.

The Supreme Court's opinion in *Great-West* did not preclude all actions seeking reimbursement under section 502(a)(3), however, and thereafter suits by benefit plans have been upheld where specifically identifiable funds were in existence. *See, e.g., Mid Atl. Med. Servs., Inc. v. Sereboff*, 303 F. Supp. 2d 691, 696 (D. Md. 2004) (upholding action for reimbursement by benefit plan where plan beneficiary holding settlement funds in special account); *Mid Atl. Med. Servs., Inc. v. Do*, 294 F. Supp. 2d 695, 700 (D. Md. 2003) (upholding action where settlement funds paid to plan beneficiary's attorney in trust); *Sealy, Inc. v. Nationwide Mut. Ins.*

*Co.*, 286 F. Supp. 2d 625, 631 (M.D.N.C. 2003) (upholding action where settlement funds paid into court by insurance company).

In the present case, however, there are no identifiable funds, since Brewer asserts that settlement is conditioned on a waiver of the Plan's subrogation rights. In response, the Plan argues that Sparks, Nationwide, and State Farm may take a different view of the settlement and contend that it was unconditional. The Plan has the burden of proof in this case, however, and the Motion to Approve Settlement, the only evidence of the settlement before me, supports Brewer's position that unless outstanding subrogation rights are waived, no settlement has occurred. Absent a settlement, the Plan has no cause of action under section 502(a)(3). *See Pan-Am. Life Ins. Co. v. Bergeron*, 82 Fed. Appx. 388, 391 (5th Cir. 2003) (unpublished) (holding that where insurance company had offered settlement for automobile accident, but plan beneficiary had not accepted, employee benefit plan had no cause of action under ERISA for reimbursement of medical expenses paid).

For these reasons, it is **ORDERED** that Plaintiffs' Motion for Summary Judgment is DENIED.

ENTER: August 17, 2004

/s/ JAMES P. JONES  
Chief United States District Judge